

INTERNATIONAL INVESTMENT SURVEY ACT OF 1976

SEPTEMBER 9, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Nix, from the Committee on International Relations,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2839]

The Committee on International Relations, to whom was referred the bill (S. 2839) to supplement the authority of the President and various Federal agencies to collect regular and periodic information on international investment, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in *italic type* in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

PURPOSE

The purpose of this bill is to empower the President and his designees to establish and maintain a regular information collection program with respect to foreign investment in the United States and U.S. investment abroad.

COMMITTEE ACTION

S. 2839 was introduced by Senators Inouye and Magnuson on December 19, 1975, and was reported favorably to the Senate by its Commerce Committee (Senate Report 94-834) on May 13, 1976, and passed by the Senate by voice vote on May 18, 1976. The bill was referred to the Committee on International Relations of the House of Representatives on May 19, 1976, and its Subcommittee on International Economic Policy on June 1, 1976. The subcommittee held hearings on this and similar bills on June 16 and June 30, 1976. S. 2839

was reported favorably with amendments by the subcommittee on August 31, 1976, to the Committee on International Relations.

The language of a draft bill based in part on H.R. 13684, introduced by Representative Edward G. Biester, Jr., for himself and Representative Benjamin A. Gilman, was adopted as a substitute amendment to the language of S. 2839 by the subcommittee. S. 2839 was then ordered unanimously reported with a favorable recommendation to the Committee on International Relations. The committee on September 9, 1976, reported S. 2839 favorably to the House of Representatives with a recommendation that it do pass.

BACKGROUND

This legislation meets the need to create a clear legislative mandate for timely and adequate U.S. Government studies of the impact on the U.S. economy of international investment.

The legislation is necessary because present statutory authority to collect data is not adequate. A major source of present statutory authority is contained in 22 U.S.C. 286(f), the "Bretton Woods" enabling legislation. This legislation has as its primary purpose the collection of data on balance of payments questions for use by the International Monetary Fund. The "Bretton Woods" legislation can no longer meet the diverse and ever increasing need for information on international investment. For example, one of our most pressing needs today is to obtain data bearing on any cause-and-effect relationship between investment abroad by U.S.-based companies and unemployment in our domestic economy. This question and others like it are complex enough to justify increased study.

Experience under existing legislation demonstrates that a great deal of time elapses between studies on international investment. The last benchmark survey on U.S. investment abroad took place in 1966, while the last voluntary sample survey was taken in 1970. There has been no thorough portfolio investment survey of U.S. holdings abroad taken since 1941. This legislation provides a timely schedule for benchmark surveys of U.S. direct investment abroad, foreign direct investment in the United States, foreign portfolio investment in the United States, and U.S. portfolio investment abroad. The authority for foreign direct and portfolio investment surveys under the Foreign Investment Study Act of 1974 sponsored by this subcommittee has expired. This legislation renews and expands that authority.

The magnitude and speed of change in international investment makes the enactment of new legislative authority to collect data imperative. From 1970 to 1974, overseas private investment position of the United States increased from \$105 billion to \$169.1 billion, an increase of over 60 percent in 4 years, while the private investment position in the United States of foreign persons went from \$51 billion to \$93.6 billion, an increase of over 80 percent, according to U.S. Department of Commerce sources. In recent years, some experts estimate that 25 cents of every dollar invested by large American business interests is invested abroad. The implications of such developments have a bearing on issues as diverse as employment, national security, taxation, and foreign policy generally.

BRIEF DESCRIPTION

S. 2839, as reported, which may be cited by its short title as the "International Investment Survey Act of 1976," requires the President to set up a regular and comprehensive data collection program to obtain current information on international investment questions, to publish such data on a regular and periodic basis, and to conduct "benchmark surveys" of foreign direct investment in the United States, of U.S. direct investment abroad, and of foreign portfolio investment in the United States at least once every 5 years. The President is also directed, not later than 5 years after enactment, to conduct a "benchmark survey" of U.S. portfolio investment abroad on a one-time basis and at his discretion thereafter. The President shall also conduct a study of the feasibility of establishing a system to monitor foreign direct investment in the United States in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system, and he shall report his findings to Congress no later than 2 years after enactment of this bill.

The President or his designees are authorized to compel designated persons to keep records and to report relevant information to agencies administering the program. Civil, criminal, and injunctive procedures are provided for in support of the purposes of the legislation.

Information collected pursuant to the legislation shall not be divulged publicly in any way that might identify the company or individual making such report and such protection is extended to "customers" of those reporting under the bill.

SECTION-BY-SECTION ANALYSIS

Section 1

This section sets forth the short title for the bill. It is to be cited as the "International Investment Survey Act of 1976."

Section 2

Section 2 sets forth findings of Congress and a declaration of policy. The section contains seven findings—

(1) The U.S. Government is presently authorized to collect limited amounts of information on U.S. investment abroad and foreign investment in the United States;

(2) International investment has increased rapidly in recent years;

(3) Such investment significantly affects the economies of the United States and other nations;

(4) International efforts to obtain information on the activities of multinational enterprises and other international investors have accelerated recently;

(5) The potential consequences of international investment cannot be evaluated accurately because the U.S. Government lacks sufficient information on such investment, its actual or possible effects on the national security, commerce, employment, inflation, general welfare, and foreign policy of the United States;

(6) Accurate and comprehensive information on international investment is needed by the Congress to develop an informed U.S. policy on such investment; and

(7) Existing estimates of international investment, collected under existing legal authority, are limited in scope and are based on outdated statistical bases, reports, and information which are insufficient for policy formulation and decisionmaking.

It is declared the purpose of the bill to grant unambiguous authority for the President to collect information on international investment and to prepare analysis thereof for the Congress, the executive agencies and the general public. Information collected under this bill is to be collected in a way that will impose the least burden on the deter foreign investment in the United States or U.S. investment of effort, consistent with the national interest in obtaining comprehensive and reliable data.

The bill should not be interpreted in such a way as to restrain or deter foreign investment in the United States or U.S. investment overseas.

Section 3

Section 3 defines the terms used in the bill.

Section 3(1) defines "United States" in a geographic sense, as the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States.

Section 3(2) defines the word "foreign" when used in a geographic sense, as that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

Section 3(3) defines "person" as any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

Section 3(4) defines "U.S. person" as any person resident in the United States or subject to the jurisdiction of the United States.

Section 3(5) defines "foreign person" as any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Section 3(6) defines "business enterprise" as any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Section 3(7) defines "parent" as a person of one country who, directly, or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country.

Section 3(8) defines "affiliate" as a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch.

Section 3(9) defines "international investment" as (A) the ownership or control, directly or indirectly, by contractual commitment or

otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a U.S. person, and (B) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by U.S. persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

Section 3(10) defines "direct investment" as the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

Section 3(11) defines "portfolio investment" as any international investment which is not direct investment.

Section 4

This section prescribes the responsibilities and authority granted by the bill. In general, the President is directed, to collect data and information on a current basis and to conduct "benchmark surveys" on a periodic basis relative to international investment. He is instructed to publish such material and make it available to the general public and U.S. Government agencies.

Section 4(a) sets out the duties of the President specifically.

Section 4(a) (1) provides that the President shall conduct a regular data collection program to secure current information on international capital flows, including, but not limited to, information needed to compute and analyze U.S. balance of payments, the employment and taxes of U.S. parents and affiliates, and the international investment position of the United States.

Section 4(a) (2) provides that the President shall conduct studies and surveys and prepare reports in a timely manner on specific aspects of international investment which may have significant implications for the economic welfare and national security of the United States.

Section 4(a) (3) provides that the President shall study the adequacy of information disclosure and reporting requirements and procedures relative to international investment, recommend necessary improvements in the program, and report to the Committees on Foreign Relations and Commerce of the Senate and the Committee on International Relations of the House of Representatives on national and international developments with respect to laws and regulations affecting international investment.

Section 4(a) (4) provides that the President shall publish for the use of the general public and U.S. Government agencies periodic, regular, and comprehensive statistical information collected pursuant to section 4.

Section 4(b) (1) directs the President to conduct comprehensive benchmark surveys on U.S. direct investment abroad and foreign direct investment in the United States at least once every 5 years. The President is also directed, to the extent he determines necessary and feasible, to—

- (1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (a) information on the balance sheet of parents and affiliates and related financial data, (b) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (c) related information regarding trade between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of U.S. and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

Section 4(c) (1) directs that the President conduct a comprehensive benchmark survey of foreign portfolio investment in the United States at least once every 5 years, and he shall (among other things and to the extent he determines necessary and feasible) determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record.

Section 4(c) (2) directs the President to conduct a benchmark survey of U.S. portfolio investment abroad and (among other things and to the extent he determines necessary and feasible), to determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record. The President shall complete such survey not later than the end of the 5-year period beginning on the date of enactment of this bill. At the completion of such survey, the President shall report to the Congress on the feasibility and desirability of conducting on a periodic basis additional benchmark surveys and he may conduct such surveys if he so finds.

Section 4(d) provides that the President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, and the feasibility of establishing a nationwide multipurpose land data system, and he shall submit his findings and conclusions to the Congress not later than 2 years after enactment of the bill.

Section 4(e) provides that information obtained pursuant to the bill shall be timely and useful in the development of policy with respect to international investment. Costs should be minimized, consistent with effective enforcement and the compiling of required information. Reporting, recordkeeping, and documentation requirements shall be reviewed periodically and revised in light of developments in the field of information technology.

Section 4(f) directs the President to have due regard to the costs incurred by persons supplying information as well as cost to the Gov-

ernment, and information shall be collected only in such detail as is necessary to the stated purposes for which it is gathered.

Section 5

Section 5(a) authorizes the promulgation of rules and regulations as may be necessary to carry out the purposes of the bill.

Section 5(b) provides that such rules and regulations may require any persons subject to the jurisdiction of the United States to—

(1) Maintain a complete record of any information essential to carrying out surveys and studies to be carried under the act; and

(2) To furnish, under oath, reports containing information determined to be necessary to carry out surveys and studies to be carried out under the act.

Section 5(c) provides that information obtained under 5(b) shall be available only to officials or employees designated to perform functions under this act, including consultants and contractors. The President may authorize the exchange of information between Federal agencies to the extent that this is necessary to carry out the purposes of this act. Nothing in this section shall be construed to require any Federal agency to disclose to another Federal agency exercising authority under this legislation any information or report collected under legal authority other than that contained in this bill, if such disclosure is prohibited by law. Information collected under section 5(b)(2) may be used only for analytical purposes or for an enforcement proceeding against a person who allegedly fails to report. Information may not be published or made available if its source can be specifically identified, and no person can compel submission or disclosure of any information or report or constituent part of a report collected pursuant to the bill, without prior written consent of the persons who are involved, or who are identifiable therefrom, including customers.

Section 5(d) provides that any person who willfully violates the confidentiality provision shall be fined not more than \$10,000, in addition to any other penalty imposed by law.

Section 6

This section provides civil and criminal penalties for noncompliance with rules, regulations, or instructions promulgated under the bill.

Section 6(a) provides that whoever fails to furnish information required in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated under the bill, may be subject to a civil penalty not exceeding \$10,000 in a proceeding provided for by section 6(b).

Section 6(b) provides that a civil action may be brought in an appropriate district court of the United States, or an appropriate U.S. court of any territory or other place subject to the jurisdiction of the United States, and that such court may enter a restraining order, or a permanent or temporary injunction, commanding any person to furnish information required under the bill, or to comply with any rule, regulation, order, or instruction, as the case may be, or impose the civil penalty set out in section 6(a), or both.

Section 6(c) provides that whoever willfully fails to submit any information required under this bill, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule,

regulation, order, or instruction promulgated under this act, shall upon conviction be fined not more than \$10,000, and, if an individual, may be imprisoned for not more than 1 year, or both, and any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both.

Section 7

Section 7(a) authorizes the President, or his designees, to obtain staff and consultants under the provisions of 5 U.S.C. 3109 at a rate not in excess of maximum compensation so provided, including travel expenses and per diem as authorized by 5 U.S.C. 5703(b).

Section 7(b) provides that any official designated by the President to carry out this bill may use, on a reimbursable basis when appropriate as determined by the President) the available services, equipment, personnel, and facilities of any agency or instrumentality of the U.S. Government.

Section 8

Section 8(a) provides that officials performing functions under this bill shall secure balanced, diverse, and responsible views from qualified persons representing business, organized labor, and the academic community on international investment issues and information-collection procedures. Where appropriate, public advisory committees may be established to provide independent views.

Section 8(b) provides that the Council on International Economic Policy shall have the responsibility of reviewing the results of any studies and surveys conducted under the bill and report annually to the Committee on International Relations for the House of Representatives and the appropriate committees of the Senate on any trends or developments which may have national policy implications and which warrant the review of the respective committees.

Section 9

Section 9 provides that for the fiscal year ending September 30, 1978, and the fiscal year ending September 30, 1979, there is authorized to be appropriated \$1 million for each year, for the purpose of carrying out this bill.

COST ESTIMATES

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, this bill does not authorize the appropriation of funds for the transition quarter or for fiscal year 1977. For fiscal years 1978 and 1979, the bill authorizes the appropriation of \$1 million for each such fiscal year.

STATEMENT REQUIRED BY CLAUSE 2(1)(3), RULE XI OF THE RULES OF THE HOUSE

Pursuant to the requirements of clause 2(1)(3), rule XI of the rules of the House the following statements are made:

(A) Oversight findings and recommendations

The Committee on International Relations has reviewed the reports submitted to Congress pursuant to the Foreign Investment Study Act of 1974 and, as a result, recommends the enactment of S. 2839 as amended.

(B) Congressional Budget Act section 308(a) requirement

This measure provides no budget authority.

(C) Congressional Budget Office estimate and comparisons

No estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been received by the committee.

(D) Committee on Government Operations summary

No oversight findings and recommendations have been received which relate to this measure from the Committee on Government Operations under clause 2(b) (2) of rule X.

INFLATIONARY IMPACT STATEMENT

Enactment of S. 2839 would not have any measurable inflationary impact.

ADDITIONAL VIEWS OF HON. JONATHAN B. BINGHAM

While I support the provisions of S. 2839, I am concerned and disappointed that the legislation fails to provide for disclosure of multinational corporate investment data on a company-by-company and country-by-country basis. In that respect, the bill is much weaker than proposed legislation introduced by, among others, myself, Senator Frank Church, and Representative Nix (H.R. 13756 and S. 3151).

I continue to believe that information of the kind identified by S. 2839 for collection and analysis must be available to policymakers in more than just aggregate terms. Aggregate data alone is inadequate and can even be misleading in view of the size and dominance of a few large multinational firms in particular areas of trade and investment. With respect especially to such firms, some of which have budgets and resources greater than those of some of the major governments of the world, policymakers must have more detailed information identified at the level of individual firms in order fully to appreciate both the beneficial and possible undesirable effects such firms and their operations may have on the public.

Such company-by-company data was specifically mandated by H.R. 13756 and S. 3151. This legislation was unfortunately not given sufficient consideration before the Senate passed S. 2839.

It is especially unfortunate that the present legislation does not call for company-by-company disclosure of information on the investments and business activities of multinational firms in view of the fact that the United States has recently joined in an international declaration which clearly endorses and envisages such disclosure. I refer to the June 21, 1976, declaration of the member governments of the Organization for Economic Cooperation and Development (OECD). That declaration commits the United States to "recommend" to multinational enterprises operating within U.S. jurisdiction certain "guidelines" for action, including the following:

Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improve public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, in so far as is necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular:

- (i) The structure of the enterprise, showing the name and location of the parent company, its main affiliates, its

percentage ownership, direct and indirect, in these affiliates, including shareholdings between them;

(ii) The geographical areas ¹ where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;

(iii) The operating results and sales by geographical area and the sales in the major lines of business for the enterprise as a whole;

(iv) Significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;

(v) A statement of the sources and uses of funds by the enterprise as a whole;

(vi) The average number of employees in each geographical area;

(vii) Research and development expenditure for the enterprise as a whole;

(viii) The policies followed in respect of intragroup pricing; and

(ix) The accounting policies, including those on consolidation, observed in compiling the published information.

Government appeals to multinational firms voluntarily to disclose the kind of information described in S. 2839 and in the OECD declaration are likely to be resisted, if not totally ignored. I believe, however, that the United States, which has jurisdiction over most of the world's largest multinationals, should take the lead in requiring disclosure of such information as a model and incentive to other nations to do likewise. Legislation supplementing the current bill along the lines suggested by Senator Church and myself, combined with strong diplomatic efforts to achieve disclosure of similar information by foreign-based multinationals, would go a long way toward achieving full international sharing of essential trade and investment information on a country-by-country and company-by-company level, and should be further considered and pursued.

JONATHAN B. BINGHAM.

¹ For the purposes of the guideline on disclosure of information the term "geographical area" means groups of countries or individual countries as each enterprise determines is appropriate in its particular circumstances. While no single method of grouping is appropriate for all enterprises, or for all purposes, the factors to be considered by an enterprise would include the significance of operations carried out in individual countries or areas as well as the effects on its competitiveness, geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of interrelationship of the enterprise's operations in the various countries.

